IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5771 of 2006
To
SPECIAL CIVIL APPLICATION No. 5781 of 2006
With
SPECIAL CIVIL APPLICATION No. 5864 of 2006
With
SPECIAL CIVIL APPLICATION No. 5891 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MURLIDHAR KELAVNI MANDAL - Petitioner(s)
Versus
DISTRICT EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.
MS NANDINI JOSHI, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 31/03/2006

COMMON ORAL JUDGMENT

Rule. Ms. Nandini Joshi, learned Assistant Government Pleader for the respondents appears and waives notice of Rule. With consent of both the sides, the matter is finally heard today.

2. Since all the matters are interconnected and common question arises for consideration, they are being considered by this common order.

3. In all the petitions, the challenge made by the petitioners is against the order passed by the District Education Officer for recovery of the computer grant on the alleged ground that the computer which were purchased by the school concerned, who are petitioners herein were not as per the requisite standard and the shortcomings in the computer are reportedly found by the Institution namely Vikram A. Sarabhai Community Science Centre.

4. It appears that there is no dispute on the aspects that the show-cause notice was given and the petitioner school submitted the reply and thereafter the impugned order has been passed. The perusal of the show-cause notice read with the report of the Vikram A. Sarabhai Community Science Centre shows that as per the report, some configuration in the computer are not found and certain items i.e. Printer etc. are not found as meeting with the standard of ISO 9002 certified products. However, show-cause notice issued by the District Education Officer to the school concerned are as vague as anything. Except by making reference to the report of the aforesaid Science Centre, nothing has

been mentioned.

5. There is no dispute on the point that the scheme for purchase of computer of the Government provided for the contribution by the school management and the contribution in part by the Government and it is not a case where no computers whatsoever were purchased. As such they are purchased having only a certain configuration and certain products are purchased but not as per the standards specified by ISO 9002. Therefore, it was required for the District Education Officer to issue a show-cause notice pointing out the details on the basis of which it can prima facie be said that there is a loss of a particular amount or non-utilisation of a particular amount for the purpose for which the grant was paid. There is no reference to the said aspects at all in the show-cause notice. It was required for the District Education Officer to mention in the show-cause notice that due to the different configuration, the cost of the computer could be less by a particular amount or due to the purchase of the item as per the ISO 9002, the cost could be less by particular amount and therefore non-utilisation or loss to the Government and therefore the recovery. As neither of the aforesaid aspects are referred to in the show-cause notice, it can be said that the show-cause notice is too vague and general and consequently the petitioners are deprived of from making appropriate reply to the said show-cause notice and therefore there is breach of principles of natural justice to that extent. Even in the final order passed by the District Education Officer, no reasons whatsoever are

mentioned even dealing with the explanation made by the petitioners nor any reasons are mentioned to the extent as to how and to what extent the fund of the grant is mis-utilised or non-utilised. Therefore, it will be required for the District Education Officer to issue a fresh show-cause notice in light of the observations made hereinabove and to call for the explanation of the school concerned and thereafter to examine each case of the School and to record the findings of non-utilisation or mis-utilisation of the fund of the Government grant and the recovery can be effected to that extent. In the present case, the recovery has been effected to the fullest extent as if the computers are not purchased or the fund is not at all used for purchase of the computers. The basis for recovery to the fullest extent even otherwise also is not justifiable because even if the recovery is to be effected, it should be in proportion to the non-utilisation and/or mis-utilisation of the fund.

6. The perusal of the report of the aforesaid Science Centre prima facie shows that some defective items which are purchased are lacking certain configuration or standardisation as per ISO 9002 and therefore, considering the facts and circumstances, I find that until the fresh show-cause notice is issued and the matter is examined by the District Education Officer afresh in light of the observations made hereinabove, the recovery which is sought to be made in the month of March 2006 by way of installment can be reduced to 1/4th of each installment of maintenance grant payable to the school concerned in the month of March 2006 and the

said withholding of the grant can be made subject to the final order which may be passed by District Education Officer and 75% of the said installment of recovery can be disbursed. I am inclined to make such observations because even if ultimately it is found by the District Education Officer that any additional amount is recoverable, the same can be considered at the next installment of release of maintenance grant.

7. In view of the aforesaid, I find that the following directions shall meet with the ends of justice.

1. The impugned decision of District Education Officer of recovery of computer grant of Rs. 3 Lakhs for each concerned petitioner school are quashed and set aside on the ground of breach of principles of natural justice and it is further directed that the District Education Officer shall issue a fresh show-cause notice to the concerned school, who are petitioners herein in light of the observations made hereinabove and if such show-cause notice is issued, the concerned school, who are petitioners herein may submit the explanation and thereafter the matter shall be decided afresh on the aspects of recovery of the grant and if yes, to what extent. Keeping in view the observations made hereinabove. Such decision shall be taken as early as possible preferably within a period of three months from today.

2. Until the decision is taken afresh in respect of each school concerned, who are petitioners herein,

there shall be stay of recovery of the grant to the extent of 75% and therefore accordingly in the installment to be recovered from the school concerned in the month of March, 2006, 25% recovery shall be provisionally effected subject to the final order and 75% of the installment of the recovery shall be released together with the maintenance grant payable to the school concerned in the last installment of March, 2006.

8. Petitions are partly allowed in terms of the aforesaid direction. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs. Direct Service is permitted.

(JAYANT PATEL, J.)

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